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(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the Conditional Commitment for Guarantee is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency approval to pay such obligations and not jeopardize a guarantee from the Agency. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations. However, the Agency is not required or obligated to pay a loss unless a written guarantee is issued,

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide the certification required by paragraph (b)(4)(iii) of this section,

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications, and

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

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§ 3575.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.* (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities, or

(i) Projects that are located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program.

§ 3575.26 [Reserved]

§ 3575.27 Eligible lenders.

(a) *Eligible lenders.* Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

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(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination and supervision by either an appropriate agency of the United States or a State that supervises and regulates credit institutions and provide documentation acceptable to the Agency that they have the ability to service the loan. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 3575.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender, provided:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers, including changes in the form of the legal entity. Exceptions to a change in the legal entity may be requested when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 3575.29 Fees and charges by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they do not exceed those charged other borrowers for similar types of transactions. "Similar types of transactions" mean those transactions involving the same type of loan for which a non-guaranteed loan borrower would be assessed charges and fees.

(b) *Late payment fees.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) Payment has not been received within the customary timeframe allowed by the lender; or

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) *Guarantee fees.* The guaranteed loan fee will be the applicable guarantee fee rate multiplied by the principal loan amount multiplied by the percent of guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued.